Why language matters in the Year of the Code

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Supporting the Code of Practice means a commitment to work with families and individuals to resolve issues in a constructive way. To achieve this, and to conduct the case with the necessary objectivity, family justice professionals must use plain English that the public can understand.

Lawyers are trained to learn principles that are framed in concepts that are difficult for us to understand, let alone explain. Improving how we communicate the law to our clients is our job.

The significance of communications

It is very easy to use language that we are familiar with, without thinking about whether the recipient will understand it. A litigant in person, who is already feeling at a disadvantage, may be further intimidated and antagonised by such language. Legislation in its current format can be hard for litigants in person to find and to follow.

In research carried out by Advicenow, the legal education, information and support charity, interviewees with limited or no access to legal representation expressed upset and frustration at the complexity of the court process and language, and the paucity of affordable legal advice available for litigants in person.

It is common for clients experiencing relationship breakups to struggle to hear advice due to their emotional state. The trauma can be significant, hindering understanding and engagement.

Any communication is susceptible to the following reactions:

- **Fight** – a common and instinctive reaction to a feeling of being attacked.
- **Flight** – running away or refusing to engage despite it being in their best interests to do so.
- **Freeze** – an inability to do anything in the face of their legal problem.

Good practice

Language is at the heart of Resolution's Code of Practice, committing its thousands of members to reduce or manage conflict and confrontation. It also runs through the good practice guides on communication, correspondence, working with litigants in person and working with vulnerable clients. In order to comply with the Code, correspondence should be:

- constructive, informative and effective
- without emotive or inflammatory language
- easily understandable, without jargon or complicated language

The Family Solutions Group Paper Language Matters sets out five core principles for language change in family law:

- **Plain English** – avoid legal jargon and use words which can easily be understood.
- **Personal** – use family names rather than legal labels such as "our client".
- **Proportionate** – use language which is proportionate to the family issues being considered.
- **Problem-solving** – use constructive problem-solving language rather than battle language.
- **Positive futures** – the emphasis is not on past recriminations but on building positive futures in which children can thrive.

The paper also contains the following recommendations that family justice professionals can apply in their day-to-day practice:

- Only write a letter if a phone call is not possible.
- Always take or return phone calls from the other partner or their lawyer. Always consider the impact on the other client of the words used.
- A solicitor's letter should be used to present constructive proposals for change and how this is to be achieved consensually.

- Be mindful of the language used about the partner or the partner's lawyer. It should never be derogatory or dismissive.

User-centred approaches

By adopting a user-centred approach, family justice professionals can better apply the Code in practice. User-centred guides that underpin legal advice help the public understand the law better, making it more transparent.

Communicating the law in more user-centred ways is more effective for our clients. The simpler and clearer something is written, the more likely it will be read and understood. The better clients understand their lawyers, the more likely they are to have realistic expectations in relation to your role, the negotiations and outcomes.

Advicenow gives the following guidance on writing good legal information, including:

- Know your audience.
- Be clear what you are trying to achieve.
- Build your legal information around the needs of your audience.
- Make it easy to use.
- Include only what your audience needs to know, in the order they need to know it.
- Build their legal capability (knowledge, skills and confidence needed to deal with a legal issue).
- Address the realities of their situation.
- Test out your information to ensure it is helpful to your audience.
- Choose the right language and tone for your audience.
- Signpost accurately for further help.

Use simpler words wherever possible, for example "work with" rather than "collaborate". Avoid metaphors or colloquial phrases. Use "you" and "we" as much as possible and write in the active rather than passive voice. Avoid abbreviations and acronyms. Keep sentences short, preferably less than 20 words long.

Writing in this way is not "dumbing down". It aids understanding, saves time, and shows respect to the reader – whoever they are. In his article *The Public Speaks: An Empirical Study of Legal Communication* (2011/2012), Christopher R. Trudeau emphasises the importance of clear, understandable communication. In his survey, seven out of ten people had struggled to understand their lawyers at some point. Using complicated terms put unnecessary barriers in the way of that understanding. Results from that survey showed that most clients prefer plain language. Interestingly (and perhaps unexpectedly), as both the educational level of clients and the complexity of subject matter increase, so does the preference for plain language.

A more user-centred approach makes our work more inclusive for everyone, specifically for those who speak English as an additional language, for those who are neurodivergent, and for those with learning difficulties or low literacy levels. 9% of the UK population do not speak English, or Welsh in Wales, as their main language. Over 16% of adults in England (7.1 million) have very poor literacy skills. The average reading age of people in the UK should be assumed as nine years old. This is also the assumed level of literacy for users of *GOV.UK*.

Communication preferences of children

Children are, mostly, the children of both parents. Parents are represented but children, generally, are not. The Family Justice Young People's Board members have produced a number of helpful short videos and Top Tips documents in relation to communicating with children and young people, which provide valuable insights into how children and young people would like to be communicated with and how best to communicate with children who may have additional or special needs.

Comment

There are increasing concerns about the need for all of us to strive to communicate much better on a basic level. With AI tools broadly embedded in both technology and usage, DIY law or robotic law is increasingly pervasive. Family justice professionals must ensure more than ever before that the language of the law and their advice is understood by the public.

Expressing the law better not only ensures greater efficiency and greater cost effectiveness, but shows compassion towards our clients. Empathic, experienced and expert advice is worth paying for.

And with better communications must come the greater likelihood of more transactional and less adversarial practice. This evolution is a natural progression from the principles enshrined in Resolution's Code of Practice, the successful and uncontroversial implementation of no-fault divorce, and the growing trend towards ways of working that encourage reduced conflict.

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